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10/594,072	09/25/2006	Carsten Wendelstorf	1703 1566US	1852
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EXAMINER				
REICHLE, KARIN M				
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3761				
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06/02/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/594,072

**Applicant(s)**

WENDELSTORF, CARSTEN

**Examiner**

Karin M. Reichle

**Art Unit**

3761

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 February 2009.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 26, 27, 29-36 and 38-50 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 26, 27, 29-36 and 38-50 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 25 September 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The substitute specification filed 24-09 has not been entered because it does not comply with 37 CF 1.121 in that it does not show all the changes made to the original specification. Note again paragraph 1 of the last Office Action, i.e. “The Preliminary amendment to the specification filed 9-25-06 can not be entered since the amendments to pages 10 and 12 do not set forth with specificity the position that such are to be entered, e.g. line numbers, and the amendment to page 16 is an amendment to the claims section not the specification” (Emphasis added). See also discussion infra.

### ***Specification***

#### ***Drawings***

2. The drawings were received on 2-24-09. These drawings are not approved. See paragraph supra, i.e. the substitute specification which describes the new Figure has not been entered. Also, see discussion of claims infra, i.e. the Figures do not show the invention as now claimed. The proposed Figures raise new informalities, i.e. originally there were pages 1-6 and they were labeled as such but now a new sheet was added but all the pages were not renumbered to reflect such. The proposed Figures also do not appear to overcome all the pending rejections, i.e. see the last Office action, e.g. no proposed Figures shows a absorbing element component, i.e. only just a section thereof, of uniform thickness as claimed in claims 38-39. Therefore, see the following paragraph.

3. The drawings are objected to because in the Figures are replete with informalities. For example, in Figures 2 and 4-5, a clear view of the absorbing element including all its various topological areas should be clearly set forth. Also in Figure 5 the components, including the lines and/or arrows thereto, which are beneath/underlie other structure should be shown in dashed lines, note Figure 6, i.e. the absorbing element and distributing layer should be shown in dashed lines. This also applies to the portion of the absorbing element underlying the distributing layer in Figure 2. Figure 6 is not a cross-section of Figure 5, e.g. where is layer 40 in Figure 6? The Figures are not commensurate with what is described as being shown in the Figures on pages 10-11, e.g. Figure 2 does not show merely a top view of the absorbing element. See also the following paragraphs. The drawings should be carefully reviewed and revised, as necessary. Applicant is thanked in advance for his/her cooperation in placing the drawings in proper form. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the absorbing element as claimed in claims 38-39, as best understood, see page 7, sixth to last line to page 8, line 7, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Description***

5. The disclosure is objected to because of the following informalities: The disclosure is replete with informalities. Note paragraph 1 of this application again, i.e. substitute specification was not entered. For example, the specification should include the sections with each section preceded by the appropriate section heading. The Summary of the Invention section, i.e. a description of the claimed invention, and the invention of the claims should be commensurate in scope, see MPEP 608.01(d), e.g. where are the specifics of the test set forth on pages 3-4 set forth in the claims? Is Applicant setting forth definitions in the paragraph bridging pages 2-3? The description of the Figures on lines 10-11 is not commensurate with what is shown in the Figures. The last line of page 10 appears to be missing a word or words. The disclosure should be carefully reviewed and revised, as necessary. Applicant is thanked in advance for his/her cooperation in placing the drawings in proper form.

Appropriate correction is required.

***Claim Objections***

6. Claim 27 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 27 does not further limit the range of claim 26 but rather broadens it. See also paragraph 8 *infra*.

***Claim Rejections - 35 USC § 112***

7. Claims 26-27, 29-26 and 38-50 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. See lines 5-14 of claim 26, esp. lines 13-14. Applicant appears to rely on Figure 1 for support, see paragraph bridging pages 13-14 of the 2-24-09 remarks. However, while Figure 1 shows regions 3 and 4 of the mold become deeper towards the left and right it also show the mold becoming less deep again towards the left and right as they reach the side edges, i.e. decrease again in the transverse direction, which is not what is claimed. Note also the following paragraph. If Applicant maintains this claim language, the portion of the originally filed specification which provide support for the full scope of each claims in a single embodiment should be set forth.

8. Claims 27 and 29-36 and 45-46 and 48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 27, which depends from claim 26, see paragraph 6 supra, the range of 30% to less than 40% is inconsistent with that claimed in claim 26. In claims 29-32, 34-36, 45 and 48, a positive structural antecedent basis for “said...area of increasing mass per unit area” should be set forth, i.e. is this “said front ...area”, “said ... rear area” or both or something else? In regard to claim 33, are the two said first areas claimed in this claim and those close in claim 26 one and the same, i.e. how many first areas at a minimum are being claimed?

***Claim Language Interpretation***

9. The claim terminology will be interpreted in light of the definitions set forth in the paragraph bridging pages 2-3, and thereby the test set forth on pages 3-4, and page 8, last 4 lines. However it is noted that the specific unit area of such mass as claimed has not been set forth, i.e. the specific dimensions of what constitutes a unit has not be set forth, i.e. specific length, width and thickness of a "unit" have not been set forth. Note also page 2, lines 11-14, page 11, lines 12-15, page 5, lines 12-16, page 6, lines 16-24 (as best understood about the center two-eighths of the article is the crotch area (note the crotch area of the absorbing component or the relation of the component to such area of the article has not been set forth)), page 7, sixth to last line-page 8, line 7. Any other terminology will be interpreted in light of its usual, e.g. dictionary, definition. With regard to claim 27 and 29-30, due to the lack of clarity discussed in paragraph 8 (Note paragraph 6 also), the claim is considered to require a mass per unit area increase within the broadest claimed range. Note MPEP 2131.03, I. and II. and 2144.05. Claim 38 is a product by process claim, see MPEP 2113. The end product of claim 38 is interpreted to require an absorbing element component as claimed in claim 26 having at least a portion thereof which is of uniform thickness. With regard to the claims and the discussion in paragraph 7, see MPEP 2163.06, I. With regard to claims 29-32, 34-36, 45 and 48, due to the lack of clarity discussed in paragraph 8, the claims are considered to require the claimed limitation by at least one of the front or rear areas. Due to the lack of clarity discussed in paragraph 8, claim 33 is interpreted to require a minimum of two first areas, e.g. at least the front and rear first areas of claim 26.



***Claim Rejections - 35 USC § 102/103***

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 26-27, 29-36, and 38-50 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Picniak et al '442.

Claim 26: See Claim Language Interpretation section supra, hereinafter also referred to as CLI, and '442 at Figures, and col. 4, lines 2-60 (Note esp. lines 2-5 and central location of Figures 19-21), col. 6, lines 20-48, col. 7, lines 3-27, 33-58, esp. lines 33-35, col. 8, lines 4-20, 26-33, col. 8, line 66-col. 9, line 55, col. 10, lines 22-56, i.e. '442 teaches a disposable hygiene article 10 having an absorbing element component 14 for storing body liquids, the absorbing element component comprising a respective front and rear first area, e.g. adjacent at least a portion of 34, 36, resp., having a mass per unit area of absorbent material that increases starting from a longitudinal center line extending in a longitudinal direction of the hygiene article in a transverse direction towards side edges of the hygiene article so that a mass per unit area of the absorbent material of the absorbent element component increases in the transverse direction on both sides of the longitudinal center line towards side edges of the absorbing element component without decreasing again in the transverse direction, see, e.g., col. 4, lines 2-5 and co. 7, lines 33-35, Figures 19-21, i.e. a single elongated area, e.g. 40, centrally located along the longitudinal centerline and laterally bounded by portions, e.g. 14, and col. 4, lines 9-18 and col. 10, lines 22-33, the absorbing element component further comprising a respective front and rear second area having a mass per unit area of absorbent material which increases in the longitudinal direction of the hygiene article towards a crotch area thereof and is maximum within the crotch area, see,

e.g., col. 9, lines 4-9 and col. 9, lines 35-39, i.e. the mass due to the superabsorbent in the laterally bounded areas increase to a maximum in the central/crotch area ( Note also discussion of claim 30 *infra*) and wherein the absorbing element component has a width which decreases from a rear and/or front area of the hygiene article towards the crotch area, see Figures and col. 6, lines 20-24. Claim 26 further claims a storage capacity of a section extending in a longitudinal direction over 40-90 % of a length of the absorbing element component is substantially constant along the longitudinal direction. (Note that the claim does not require extension over only such range, i.e. a section which extends 100% extends the claimed range). See CLI *supra* and the cited portions of '442. While '442 does not explicitly teach a section extending in the longitudinal direction over the claimed percentage length having a storage capacity which is constant as determined by the test set forth in the instant application, see CLI *supra*, it does teach a section, e.g. the at least one elongated area or one of the laterally bounding areas as seen in the Figures which extends over a length, see, e.g., col. 4, lines 28-36, e.g. a length in the range of 40%-90%, of substantially constant and/or uniform composition for the same purposes, see col. 7, lines 3-12 and compare to the second full paragraph on page 2 of the instant application. Therefore it is the Examiner's first position that there is sufficient factual evidence for one to conclude that such absorbing component of '442 also inherently possesses the claimed storage capacity when tested in the same manner as that of the claimed component. See MPEP 2112.01. See also *In re Fitzgerald*, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980), i.e. the burden to show that this, i.e. materials are substantially identical, in fact, is not the case is shifted to Applicant. In any case, note again that '442 recognizes the same problem and also desires the same properties/combination of properties as the instant application as well as

capacity to absorb in the longitudinal direction being a result effective variable, see the cited portions of '442. Note also MPEP 2141.05. Therefore, it is the Examiner's second position that even if the prior art does not include the storage capacity, the general conditions of the claim are disclosed thereby and it is not inventive, i.e. it would be obvious to one of ordinary skill in the art, to discover the optimum or workable ranges, i.e. Applicant's ranges, by routine experimentation, *In re Aller*, 105 USPQ 233 (CCPA 1955).

Claim 27: The section of constant storage capacity extends over 30 to 90% of a length of the absorbing element component, see *CLI supra*, and the discussion of claim.

Claim 29: A first area of increasing mass per unit area of absorbent material increases in the transverse direction by 30 to 200 % with "sufficient specificity", see *CLI*, e.g., MPEP 2131.03 and, e.g., col. 7, lines 30-45, e.g. the amount of mass increases from more than 0% to 100%.

Claim 30: A second area of increasing mass per unit area of absorbent material, e.g. the center portion of 14 between 40, has a mass per unit area increase in the longitudinal direction of 50 to 500 % with "sufficient specificity", see *CLI*, e.g., MPEP 2131.03, the discussion of claim 26 and, e.g., col. 9, lines 42-46.

Claim 31: The maximum mass per unit area of a second area of increasing mass per unit area is larger than a maximum mass per unit area of a first area of increasing mass per unit area, see, e.g. *CLI* , the discussion of claims 26 and 29-30 and Figures 5 and 10, i.e. the maximum transverse mass increase, e.g. at rear ends of partially extending element(s) 40, is less than maximum longitudinal mass increase, e.g. between front and rear ends of 14 between element(s) 40.

Claims 32-33: The hygiene article includes two first areas, see CLI, which are separated from a center of the crotch area of the hygiene article, see discussion of claim 26, i.e. forward and rearward areas of panel 14.

Claim 34: A first area or a line of maximum mass per unit area of the first area extends in the longitudinal direction on both sides of the hygiene article over at least 15 % of a length of the absorbing element component, see CLI, Figures and discussion of claims supra.

Claim 35: A first area or a line of maximum mass per unit area of the first area extends in the longitudinal direction on both sides along side edge areas of the hygiene article, see CLI and Figures.

Claim 36: A first area of increasing mass per unit area in the transverse direction and the second area of increasing mass per unit area in the longitudinal direction are disposed in direct abutment to or overlap with each other, see CLI and Figures.

Claim 38: The absorbing element component is compressed to a substantially uniform thickness, see CLI supra and, e.g., col. 4, lines 37-39, col. 7, lines 53-58 and col. 10, lines 45-56.

Claim 39: The areas of increasing mass per unit area also form areas of increasing density, see discussion of claims supra, esp. claim 38, i.e. col. 10, lines 45-46.

Claim 40: The absorbing element component comprises at least two absorbing element layers, e.g., 16 and 44.

Claim 41: The absorbing element component has a substantially uniform mass per unit area, e.g. element 44 or see cited portions supra, e.g. uniform thickness and composition of portions, see discussion of claim 38.

Claim 42: The absorbing element component has an absorbing element layer comprising cross-linked cellulose fibers, see cited portions of col. 8.

Claim 43: The hygiene article further comprises cuff elements 22 or 24 and/or 26 extending substantially in a longitudinal direction and elevated at least in certain areas which form lateral outlet barriers and are fixed at least along a cuff bottom line, see Figure 3 adjacent 23, on a side of the article facing a user's body, see Figures 1-3.

Claim 44: The cuff elements have varying separation distances between cuff bottom lines, see, e.g. Figure 3, i.e. the cuff 24 bottom lines have a different separation space than the cuff 26 bottom lines and/or Figure 2 which shows the cuff bottom line being non-linear.

Claim 45: A first area of larger mass per unit area comprises at least one partial area in which a mutual separation between the cuff bottom lines is larger than outside of said partial area, see again, e.g., CLI and Figure 2 and the line denoting the cuff bottom line adjacent the arrow from 22 and/or Figure 3, and note the separation between cuff 26 lines are in a first area is larger than the separation between cuff 24 bottom lines which is outside of such first area.

Claim 46: The partial area is disposed outside of a central longitudinal section of the hygiene article and at a separation from a center of a crotch area of the hygiene article, see discussion of claims 32 and 33 supra and/or the discussion of claim 45. Also note the line denoting the cuff bottom line in Figure appears larger in the rear portion than other portions and larger along line 3-3 than at other portions.

Claim 47: The cuff elements are positioned such that the cuff bottom lines are disposed at a maximum separation from each other in the longitudinal direction, see Figures 2-3 and note that the claims do not require a smaller minimum separation.

Claim 48: The maximum separation is entirely within a portion of a first area, i.e. see CL1 and since the first area can extend 100% the maximum separation shown in the Figures is entirely therewithin.

Claim 49: The maximum separation between the cuff bottom lines is disposed in a front area and/or a rear area of the hygiene article, see, e.g., Figures 2-3, and the discussion of claims 45-48. It is noted that the maximum separation is not claimed as only being in the front and/or rear area.

Claim 50: The absorbing element component comprises a mixture of fibers and particulate superabsorbent materials, see cited portions of col. 8 supra.

### ***Response to Arguments***

12. Applicant's remarks have been carefully considered but are either deemed moot in that the issue discussed has not be reraised, e.g. the abstract objection, or deemed not persuasive for the reasons set forth supra. Specifically, Applicant's remarks are narrower than the claim language and/or the teachings of the prior art and/or the scope of the disclosure of the originally filed application.

### ***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to the claims and the cancellation of claims 28 and 37.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Karin M. Reichle/  
Primary Examiner, Art Unit 3761

May 29, 2009